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10 **UNITED STATES BANKRUPTCY COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA – SANTA BARBARA DIVISION**

12 In re

13 KIMBERLY ANDRE FOUCHE,
14 Debtor.

Case No. 9:22-bk-11023-RC

Chapter 7

15 KIMBERLY ANDRE FOUCHE,
16

17 Plaintiff,

18 vs.

19 UNITED STATES DEPARTMENT OF
EDUCATION, *et al.*,

20 Defendants.
21
22
23

Adv. No. 9:23-ap-01014-RC

**UNITED STATES DEPARTMENT OF
EDUCATION'S ANSWER TO COMPLAINT
TO DETERMINE DISCHARGEABILITY OF
STUDENT LOANS UNDER 11 U.S.C. §
523(a)(8)**

Status Conference:

Date: July 12, 2023

Time: 10:00 a.m.

Place: Courtroom 201

1415 State Street

Santa Barbara, CA 93101

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1 United States Department of Education, a defendant herein (“Defendant”), hereby answers the
2 *Complaint to Determine Dischargeability of Student Loans for Discharge of Student Loans Under*
3 *11 U.S.C. § 523(a)(8)* (“Complaint”) (*Docket No. 1*), filed by Kimberly Andre Fouche, the plaintiff
4 herein (“Plaintiff”):

5 **PREFATORY STATEMENT**

6 Pursuant to Federal Rules of Bankruptcy Procedure 7008(a) and 7012(b) and Local Bankruptcy
7 Rule 7008-1, Defendant consents to the entry of final orders or judgment by this Court.

8 **JURISDICTION**

9 1. Paragraph I contains allegations of jurisdiction, to which no response is required. To the
10 extent an answer is deemed required, Defendant admits that jurisdiction is proper in the United States
11 Bankruptcy Court for the Central District of California.

12 2. Paragraph II contains allegations of jurisdiction, to which no response is required. To the
13 extent an answer is deemed required, Defendant admits that jurisdiction is proper in the United States
14 Bankruptcy Court for the Central District of California.

15 **NATURE OF CLAIM**

16 3. Paragraph III contains a characterization of this matter as a core proceeding, to which no
17 response is required. To the extent an answer is deemed required, Defendant admits that this matter
18 constitutes a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(I).

19 4. Paragraph IV contains allegations of venue to which no response is required. To the extent
20 an answer is deemed required, Defendant admits that venue is proper in the United States Bankruptcy
21 Court of the Central District of California, pursuant to 28 U.S.C. § 1409.

22 **THE PARTIES**

23 5. In response to Paragraph V, Defendant is without sufficient knowledge or information to
24 form a belief as to the truth or falsity of the allegations, and on that basis, Defendant denies the
25 allegations. To the extent this Paragraph is deemed to contain allegations of material fact, each and
26 every allegation is denied.

27 6. In response to Paragraph VI, Defendant admits the allegations.

28 7. In response to Paragraph VII, Defendant admits the allegations.

1 8. In response to Paragraph VIII, Defendant is without sufficient knowledge or information
2 to form a belief as to the truth or falsity of the allegations, and on that basis, Defendant denies the
3 allegations. To the extent this Paragraph is deemed to contain allegations of material fact, each and every
4 allegation is denied.

5 **FACTUAL ALLEGATIONS COMMON TO ALL DEFENDANTS**

6 9. In response to Paragraph IX, Defendant admits the allegations.

7 10. In response to Paragraph X, Defendant is without sufficient knowledge or information to
8 form a belief as to the truth or falsity of the allegations, and on that basis, Defendant denies the
9 allegations. To the extent this Paragraph is deemed to contain allegations of material fact, each and
10 every allegation is denied.

11 11. In response to Paragraph XI, Defendant is without sufficient knowledge or information
12 to form a belief as to the truth or falsity of the allegations, and on that basis, Defendant denies the
13 allegations. To the extent this Paragraph is deemed to contain allegations of material fact, each and
14 every allegation is denied.

15 12. In response to Paragraph XII, Defendant is without sufficient knowledge or information
16 to form a belief as to the truth or falsity of the allegations, and on that basis, Defendant denies the
17 allegations. To the extent this Paragraph is deemed to contain allegations of material fact, each and
18 every allegation is denied.

19 13. In response to Paragraph XIII, Defendant is without sufficient knowledge or information
20 to form a belief as to the truth or falsity of the allegations, and on that basis, Defendant denies the
21 allegations. To the extent this Paragraph is deemed to contain allegations of material fact, each and
22 every allegation is denied.

23 14. In response to Paragraph XIV, Defendant is without sufficient knowledge or information
24 to form a belief as to the truth or falsity of the allegations, and on that basis, Defendant denies the
25 allegations. To the extent this Paragraph is deemed to contain allegations of material fact, each and
26 every allegation is denied.

CAUSE OF ACTION

CLAIM ONE

15. In response to Paragraph XV, Defendant re-alleges and incorporates its responses to Paragraphs I through XIV inclusive of the Complaint set forth above.

16. In response to Paragraph XVI, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations, and on that basis, Defendant denies the allegations. To the extent this Paragraph is deemed to contain allegations of material fact, each and every allegation is denied.

17. Paragraph XVII beginning with “WHEREFORE” constitutes a prayer for relief, to which no response is required. To the extent a response may be required, Defendant denies the allegations contained therein. Defendant further alleges that Plaintiff is not entitled to any relief.

18. Any allegation contained in Plaintiff’s Complaint which has not been admitted, denied or accepted is hereby denied.

FIRST AFFIRMATIVE DEFENSE

Plaintiff’s Complaint fails to state a claim upon which relief against Defendant can be granted.

SECOND AFFIRMATIVE DEFENSE

The student loans owed by Plaintiff to Defendant are non-dischargeable debts pursuant to 11 U.S.C. § 523(a)(8).

THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to exhaust her administrative remedies.

WHEREFORE, Defendant prays for judgment as follows:

- (1) That Plaintiff be denied the relief requested in the Complaint;
- (2) Declaring that Plaintiff’s student loan indebtedness, if any, due and owing to the United States Department of Education, is non-dischargeable pursuant to 11 U.S.C. § 523(a)(8);

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(3) For costs of suit incurred herein; and

(4) For such other and further relief as the Court may deem just and proper.

Dated: June 9, 2023

Respectfully submitted,

E. MARTIN ESTRADA

United States Attorney

DAVID M. HARRIS

Assistant United States Attorney

Chief, Civil Division

JOANNE S. OSINOFF

Assistant United States Attorney

Chief, Complex and Defensive Litigation Section

/s/ Elan S. Levey

ELAN S. LEVEY

Assistant United States Attorney

Attorneys for Defendant,

United States Department of Education

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
United States Attorney's Office, 300 N. Los Angeles Street, Room 7516, Los Angeles, California 90012

A true and correct copy of the foregoing document entitled will be served or was served **UNITED STATES DEPARTMENT OF EDUCATION'S ANSWER TO COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOANS UNDER 11 U.S.C. § 523(a)(8)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **June 9, 2023**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Jeremy W. Faith (TR)** Trustee@MarguliesFaithlaw.com, C118@ecfcbis.com;Helen@MarguliesFaithLaw.com; leedowding@gmail.com
- **Daniel A Higson** deanna@danhigsonattorney.com, higsondr45866@notify.bestcase.com
- **United States Trustee (ND)** ustpreion16.nd.ecf@usdoj.gov
- **Elan S Levey** elan.levey@usdoj.gov, julie.morales@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On **June 9, 2023**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **June 9, 2023**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

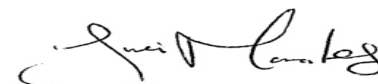
☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

June 9, 2023 JULIE MORALES

Date

Printed Name



Signature